

SHER TREMONTE LLP

July 26, 2023

BY ECF

The Honorable LaShann DeArcy Hall
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Cuomo v. Office of the New York State Attorney General,*
No. 22-mc-03044 (LDH) (TAM)

Dear Judge DeArcy Hall:

We represent former Governor Andrew M. Cuomo and write concerning the deadline for appealing Magistrate Judge Merkl's July 21, 2023 Memorandum and Order (the "July 21 Discovery Order"), which addressed an important discovery issue in the above-referenced miscellaneous action and which denied our motion to compel compliance with subpoenas. ECF No. 37. The motion underlying that decision was argued on February 7, 2023 and supplemental briefing was completed on March 3, 2023.

We intend to move for reconsideration of the July 21 Discovery Order within the fourteen-day timeframe provided in Local Rule 6.3. That motion will be based on, among other things, factual developments that post-dated the argument and briefing, and that were not part of Judge Merkl's analysis and decision. The basis for the motion is twofold: first, the July 21 Discovery Order misapplied controlling law concerning the scope of relevance for discovery purposes; and second, that the July 21 Discovery Order should have narrowed the OAG subpoena rather than quashed it in its entirety, particularly in view of events occurring after March 2023 and information not considered by the July 21 Discovery Order. *See* ECF 37 at n. 5.

The Office of the Attorney General ("OAG") opposes this extension request:

OAG opposes this request because Movant has no basis for seeking reconsideration of Magistrate Judge Merkl's thorough and well-reasoned 37-page decision on this record. The extra motion practice will impose added and unnecessary expense and burden on the parties and the Court, and any extension of the 14-day deadline under Rule 72 will needlessly delay prompt resolution of this matter "by the only court with the power to finally settle it." *Rouviere v. DePuy Orthopaedics, Inc.*, 560 F. Supp. 3d 774, 789–90 (S.D.N.Y. 2021), *reconsideration denied*, No. 18-CV-4814 (LJL), 2021 WL 5854283 (S.D.N.Y. Dec. 9, 2021).

We disagree that moving for reconsideration will impose any undue burden on OAG, particularly in view of the streamlined procedures under Local Rule 6.3. Further, we

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anticipate that the resolution of the motion for reconsideration may affect whether and on what issues we need to appeal the July 21 Order to this Court pursuant to FRCP 72(a). We disagree that proceeding in this manner will cause any undue delay, particularly considering how long the original motion was pending. We further note that if we did not seek reconsideration based on new information, OAG likely would object to our bringing that information to this Court's attention on appeal, which would be unfair.

Under these circumstances, particularly where there is no prejudice to OAG, we respectfully request that the Court extend our time to appeal the July 21 Discovery Order, currently set for August 4, 2023, until ten days after Judge Merkl rules on our motion for reconsideration. This is our first request for an extension of this deadline. Extending the time would not affect any other scheduled dates.

Respectfully submitted,

/s/ Theresa Trzaskoma

Theresa Trzaskoma